

ESTTA Tracking number: **ESTTA591691**

Filing date: **03/10/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92056168
Party	Plaintiff Legend Pictures LLC
Correspondence Address	CARLA CALCAGNO CALCAGNO LAW PLLC 1250 24TH ST NW SUITE 300 WASHINGTON, DC 20037 UNITED STATES Carla.calcagno@calcagnolaw.com
Submission	Motion to Extend
Filer's Name	Carla Calcagno
Filer's e-mail	cccacagno@gmail.com, trademarks@canopyparalegal.com
Signature	/Carla Calcagno/
Date	03/10/2014
Attachments	Legend Motion for Extension of Discovery.pdf(46831 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

LEGEND PICTURES, LLC	)	
	)	
Petitioner	)	
	)	
v.	)	Cancellation No. 92056168
	)	
QUENTIN DAVIS	)	
	)	
Respondent	)	

**PETITIONER’S MOTION FOR THE EXTENSION OF DISCOVERY SOLELY ON  
BEHALF OF PETITIONER**

Petitioner, Legend Pictures, LLC, hereby moves the Trademark Trial and Appeal Board to extend discovery solely on behalf of Petitioner for 60 days from the date of the Board’s Order. In the interest of justice, and as noted below, an extension of discovery solely for Petitioner’s benefit is justified.

This motion is timely as it is made before the close of discovery, currently scheduled to close March 10, 2014.

**I. BACKGROUND FACTS:**

The facts are as follows:

- In the initial trial order dated September 14, 2012, discovery was scheduled to close May 22, 2013.
- On March 14, 2013, Petitioner served Respondent with its First and Second Sets of Interrogatories Nos. 1-21 and Requests for Documents Nos. 1-39.

- On April 13, 2013, Respondent refused to answer any of Petitioners' interrogatories or document requests.
- On May 30, 2013, Petitioner filed a Motion to Compel. Together with the Motion to Compel, Petitioner moved to Suspend and to Extend discovery, once reopened, solely for Petitioner's benefit.
- On September 4, 2013, the Board issued an order compelling Respondent to answer Petitioner's discovery requests by October 4, 2013. The Board also extended the discovery period for both parties for sixty days, or until October 31, 2013.
- On October 4, 2013, Respondent failed to comply with the Board's Order. Instead, Respondent filed a Petition to the Director of the USPTO seeking reversal of the Board's Order of September 4, 2013.
- On October 31, 2013, the last day of the discovery period, Petitioner filed a Motion to Suspend, pending the Director's ruling. Petitioner also Moved to Extend the discovery period, once reopened, solely for Petitioner's benefit. Respondent filed no opposition to either motion.
- On December 31, 2013, the Director of the USPTO denied Respondent's petition as meritless.
- On January 7, 2014, the Board resumed the case and ordered Respondent to answer Petitioner's discovery requests by January 22, 2014.

Respondent again has failed and refused to comply with the Board's order.

For the Board's information, in a separate filing, Petitioner is also proceeding with a Motion for Sanctions including Default Judgment as Respondent has violated the Board's orders of September 4, 2013, and January 7, 2014.

In the unlikely event the Board denies Petitioner's motion for a default judgment, and allows this case to continue, Petitioner is herewith requesting that discovery be extended solely for the benefit of Petitioner. Petitioner requests that this extension run sixty days from the date the Board issues its Order.

## **II. SUMMARY OF ARGUMENTS**

Petitioner is moving for an extension of discovery solely on its behalf. Petitioner submits that this extension is justified for the three following separate and independent reasons:

- a) Respondent failed to object to Petitioner's Motion, filed on October 31, 2013, for a unilateral extension of the discovery period thus conceding the motion. Trademark Rule 2.127(a);
- b) Respondent has no need for further discovery; and
- c) Respondent should not be rewarded for its repeated failures to comply with the Board's orders.

## **III. ARGUMENT**

### **A) RESPONDENT CONCEDED PETITIONER'S MOTION FOR UNILATERAL EXTENSION OF DISCOVERY**

Respondent has previously conceded that it has no further need of discovery.

In Petitioner's prior Motion, filed October 31, 2013, Petitioner requested, inter alia, that upon resumption, discovery be extended sixty days solely for its benefit. Respondent failed to file any response to this motion. Under Trademark Rule 2.127(a), if a party fails to respond, a motion may be treated as conceded. Thus, Petitioner respectfully submits that the issue of whether discovery should be extended sixty days from the Board's order should be treated as conceded.

#### **B) RESPONDENT HAS NO NEED FOR FURTHER DISCOVERY**

On April 27, 2013, Respondent served Petitioner with Respondent's First Set of Interrogatories and Document Requests. On May 28, 2013, Petitioner timely served Respondent with its responses to Respondent's discovery. Petitioner produced its documents in July 2013.

Since then, Respondent has not taken further discovery nor served Petitioner with any follow-up discovery. Nothing in this case's procedural history has changed since that date.

Instead, Respondent has used the extended discovery period merely to delay the case and to evade answering Petitioner's discovery requests. Respondent will use any further extension of the discovery period solely to further delay this proceeding.

#### **C) RESPONDENT SHOULD NOT BE REWARDED FOR ITS REPEATED FAILURES TO COMPLY WITH THE BOARD'S ORDERS**

Due to Respondent's failures to comply with Board Orders, the Board has extended the discovery period repeatedly and has delayed these proceedings repeatedly, all to Petitioner's prejudice. In this regard, the following facts are pertinent.

On September 4, 2013, the Board issued an Order giving Respondent until October 4, 2013

in which to serve Petitioner with:

- written responses to Interrogatory Nos. 1-21;
- written responses, without objection, and produce all responsive documents, to Requests for Production Nos. 2, 3, 4, 5, 6(a), 7, 12-29 and 31-39;
- written responses and produce all responsive documents to Requests for Production Nos. 1, 6(b), 8-11 and 30; and
- provide a privilege log with respect to responsive documents deemed subject to privilege, in accordance with the Board's Order and Fed. R. Civ. P. 26(b)(5).

The Board also extended discovery noting that although the facts justified an extension solely on Petitioner's behalf, discovery would also be extended for Respondent in view of the entry of Petitioner's amendments to the Petition to Cancel.

Respondent sought to evade the Board order to compel by filing an utterly meritless Petitioner to the Director.

The Board was therefore forced to suspend the case for a second time.

On January 7, 2014, the Board finally was able to resume proceedings and again ordered Respondent to answer Petitioner's discovery requests, many without objection, by January 22, 2014. For a second time, the Board was forced to also extend the discovery period to allow Petitioner sufficient time for follow up once Respondent answered Petitioner's discovery requests.

No written responses or documents were served by Respondent on January 22, 2014.

Instead, on January 23, 2014, one day after its responses were due, Respondent served

objections and meaningless responses to Interrogatories Nos. 1-21.

On February 19, 2014, almost a month past their due date, Respondent served Petitioner with objections to all of Petitioner's Requests for Documents.

Each interrogatory response and each document request response, is virtually without content.<sup>1</sup> All are rife with objections. Despite having been expressly ordered to answer the following without objection, Respondent even objected to Petitioner's Requests for Production Nos. 2, 3, 4, 5, 6(a), 7, 12, 29, and 31-39.

Furthermore, despite the fact that Respondent 1) did not produce a privilege document log; 2) has repeatedly claimed pro se status; and 3) knows that the TTAB protective order applies, Respondent is withholding documents by claiming 'privilege' and 'confidentiality.'

In short, fully one year after Petitioner served its discovery requests on Respondent, and despite two Board orders compelling Respondent's answers, a denied Petition to the Director, and more than a month after the Boards' latest imposed due date, Petitioner is no closer to obtaining meaningful answers to its discovery than the date those requests were first served.

#### **IV. CONCLUSION AND REMEDIES SOUGHT**

By failing to comply with the Board's Order, Respondent has once again evaded answering Petitioner's discovery requests and has denied Petitioner of its right to conduct follow-up discovery and its ability to move this case forward. Thus, Petitioner respectfully requests that the Board extend the discovery period solely on its behalf, for sixty days from the date of the Board's Order resuming this case in the unlikely event default judgment is not entered against

---

<sup>1</sup> Respondent produced a total of approximately 3 minutes of what appear to be recent home shot videos of inter alia defendant jumping up and down in a gym, and a girl walking down a hallway and another girl walking down a similar hallway.

Respondent.

Date: March 10, 2014

Respectfully submitted,

/Carla C Calcagno/

Carla C Calcagno, Esq.  
Janet G Ricciuti, Esq.  
CALCAGNO LAW PLLC  
1250 24th Street NW Suite 300  
Washington D.C. 20037



### **Certificate of Service**

The undersigned hereby certifies that a true and accurate copy of the foregoing PETITIONER'S MOTION FOR THE EXTENSION OF DISCOVERY SOLELY ON BEHALF OF PETITIONER was served by agreement of the parties on Defendant by emailing a copy of same on this date to [nevisbaby@hotmail.com](mailto:nevisbaby@hotmail.com) and [tharilest@yahoo.com](mailto:tharilest@yahoo.com).

Date: March 10, 2014

/Carla Calcagno/